IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4455 of 1999

with

SPECIAL CIVIL APPLICATION No 4456 of 1999

with

SPECIAL CIVIL APPLICATION No 855 of 2000

with

SPECIAL CIVIL APPLICATION No 870 of 2000

with

CIVIL APPLICATION No 7373 of 2000
in
SPECIAL CIVIL APPLICATION No 4456 of 1999

with

CIVIL APPLICATION No 7372 of 2000
in
SPECIAL CIVIL APPLICATION No 4455 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DOLLY SALT INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4455 of 1999
   MR TS NANAVATI for Petitioners
   MR DN PATEL AGP for Respondent Authority
   MR PR NANAVATI for Respondent No. 6, 7

2. Special Civil ApplicationNo 4456 of 1999
   MR TS NANAVATI for Petitioners
   MR DN PATEL AGP for Respondent Authority
   MR PR NANAVATI for Respondent No. 7

3. Special Civil Application No : 855 of 2000
   MR PR NANAVATI for Petitioners
   MR DN PATEL AGP for Respondent Authority
   MR TS NANAVATI for Respondent No. 7

4. Special Civil Application No : 870 of 2000
   MR PR NANAVATI for Petitioners
   MR DN PATEL AGP for Respondent Authority
   MR TS NANAVATI for Respondent No. 7

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/10/2000

CAV JUDGEMENT

#. Mr.T.S.Nanavati, learned advocate appearing on behalf of the petitioner in SCA No. 4455 of 1999 and SCA 4456 of 1999 and Mr.P.R. Nanavati, learned advocate appearing on behalf of the petitioners in SCA No. 855/2000 and SCA No. 870 / 2000 and Mr.D.N.Patel, learned AGP appearing on behalf of the respondent authorities State of Gujarat, Additional Chief Secretary (Appeals), Revenue Department, Collector and the Deputy Collector so also Mamlatdar.

#. In Special Civil Application No. 4455 of 1999 and Special Civil Application No. 4456 of 1999 notices have been issued by this Court and both the matters are pending at notice stage but ad-interim relief which has been granted initially by this Court directed to be

continued until further order by the order dated 12th January, 2000. Therefore, two Civil Applications No.7373 of 2000 in Special Civil Application No.4456 of 1999 and Civil Application No.7372 of 2000 in Special Civil Application No. 4455 of 1999 filed the learned advocate Mr.P.R. Nanavati for vacating such ad-interim orders passed by this Court.

RULE in all respective petitions. Learned advocates appearing for the respective respondents in each petition waive service of rule on behalf of the respondents.

#. These all four matters with two Civil Applications are heard together and with consent of all the learned advocates appearing on behalf of the respective parties, the matters have been taken up for final hearing and by this common judgment, these matters are proposed to be disposed of finally.

#. The brief facts giving rise to these group of petition namely Special Civil Application No. 4455 of 1999 and Special Civil Application No. 4456 of 1999 are as under :-

The Special Civil Application No. 4455 of 1999 has been filed by Dolly Salt Industries and the Special Civil Application No. 4456 of 1999 has been filed by Akash Salt Industries. In both the petitions almost common facts are involved. In the said petitions, the petitioner has challenged the order passed by the Collector, Kachchh dated 23rd April, 1999 Annexure-M. The main prayer sought for in Special Civil Application No. 4455 of 1999 is to direct the respondent No.3 to forthwith comply to the order of the respondent No.2 in its true letter and spirit and in furtherance thereof the respondent No. 3 be directed to take all steps for allotment of surveyed land admeasuring 330 acres situated outside the boundary limits of Survey No. 169 of village Dhurb towards open Sea for the purposes of lease for Salt manufacturing. Even similar prayer has been made by the petitioner in Special Civil Application No. 4456 of 1999. The respondent Nos. 6 and 7 has filed affidavit-in-reply in Special Civil Application No. 4455 of 1999 on 20th July, 1999 and produced the documents along with said reply. Shri D.L.Parmar, Mamlatdar, Mundra Kachchh has filed affidavit in reply against the petition on 18th April, 2000 so also Shri Kamal Dayani, Collector of Kachchh has also filed reply dated 29th June, 2000. Thereafter, affidavit in rejoinder has been filed by the petitioner on 31st July, 2000. The case of

the petitioners are that they applied for allotment of 330 acre of land abutting to Survey No. 169 of village Dhurb Taluka Mundra District Kachchh towards the sea for a purpose of lease as per the guidelines and norms issued by the Government of Gujarat from time to time and lastly formalized under Resolution dated 31st December, 1981 for manufacturing of salt and the prescribed fee of Rs.3000/was also paid. The said application for allotment of the land in question according to the petitioner submitted on 1st December, 1995. Thereafter, the land in question for allotment to the petitioner came to be surveyed and measured by office of the DILR competent authority on 11-3-1996. The application of the petitioner came to be rejected on 28th January, 1997 for the first point of time on the ground that the said land was required for the purposes of backward class Adivasi to which the petitioners replied vide application dated 1st February, 1997 satisfactorily replying to the contentions raised therein. The request of the petitioners was to the authority in the letter dated 15th February, 1997 addressed to the Collector, Bhuj that if the land in question is not available to the petitioner, then the petitioners are prepared to take remaining land and therefore, their applications may be reconsidered. In light of this request, the Mamlatdar, Bhuj gave a positive opinion for the allotment of the land to the Deputy Collector, Bhuj by letter dated 13th May, 1997 in turn communicated the same to the Collector on 29th May, 1997. Thereafter, the Deputy Collector, Bhuj Sub Division has also given opinion in favour of the petitioner subject to obtaining the opinion from the Gujarat Maritime Board in respect of the land in question. Thereafter, by order dated 2nd June, 1998, the Collector, Kachchh has decided that application submitted by the petitioners dated 1st February, 1997 with a request to reconsider the demand of petitioners for remaining land in question. The Gujarat Maritime Board has earmarked the land in question for the future need and also notified it requiring for the purpose of industry relating to port and therefore, Gujarat Maritime Board has not given any opinion for allotment of the land in question and on the contrary, Gujarat Maritime Board has not granted no objection certificate in favour of the petitioner and therefore, ultimately the Collector has rejected the application submitted by the petitioner by order dated 2nd June, 1998. The said order of the Collector dated 2nd June, 1998 has been challenged by the petitioner before the Additional Chief Secretary (Appeals), Revenue Department by way of filing revision application No. 24/98 and No.25/98 under the provisions of Section 211 of the Bombay Land Revenue Code. It is

necessary to note that in the said proceedings, the respondent Nos. 6 and 7 namely Adani Chemicals Limited and Adani Port Limited were not party to the proceedings. However, the Additional Chief Secretary (Appeals), Revenue Department had decided the said revision application No. 24/98 and 25/98 submitted by the petitioners have been allowed and the order passed by the Collector, Kachchh dated 2nd June, 1998 has been quashed and set aside and it is directed to the Collector, Kachchh to take appropriate decision immediately as per the observations made in the said order within period of two months. According to the petitioner the respondent No.3 is sitting tight over the matter on erroneous footing that allotment of land to respondent Nos. 6 & 7 by order dated 23rd April, 1999 by Collector and the land cannot be allotted to the petitioners. According to the petitioners said consideration of the Collector, Kachchh is erroneous on the footing that the land allotted to the respondent No. 6 and 7 are 10 km away into sea from survey No. 169 of village Dhurb Taluka Mundra of District Kachchh and there is no overlapping in allotment of the land amongst the parties interse. In the event if there is such overlapping of allotment, it is stated by the petitioners that the allotment to the respondent No.6 and 7 is in total violation of all the norms in relation to priority procedure and even otherwise and has been passed in a irregular manner and without there being any basis of Government policy decision or otherwise as the Government largess. Therefore, the petitioners are challenging said inaction at the end of the respondent No.3 on one hand and poste - haste action taken by the Collector, Kachchh in passing the order in favour of the respondent Nos. 6 and 7 dated 23rd April, 1999 when prior thereto there was a order of superior authority passed in accordance with law by the respondent No.2 in favour of the petitioner and in total derogation of the priority claim of the petitioner in allotting the land to the respondent No.6 and 7 by the respondent No.3. In the facts and circumstances as narrated in the petition is highly irregular and arbitrary and hence the prayer has been made by the petitioner that the order dated 23rd April, 1999 is required to be quashed and set aside and to direct the respondent No.3 to pass appropriate orders with regard to the pending application of the petitioners over which the respondent is sitting tight since last five months.

#. The brief facts of Special Civil Application No.855 of 2000 and Special Civil Application No. 870 of 2000 are as under :-

The petitioners are public limited companies registered under the Indian Companies Act, 1956. According to the petitioners on 10th January, 1994 permission for captive jetty was granted to the petitioner No.2 and on 11th September, 1996, no objection certificate was issued to the petitioner by Gujarat Maritime Board. On 30-12-1996, the petitioner made application to the concerned Mamlatdar for allotment of the land of 500 acres. That on 12th September, 1997, Gujarat Maritime Board wrote a letter to the Collector of Bhuj instructing him not to allot any of the lands within the port area. The petitioners had deposited amount towards the price of land and obtained a receipt on 10th December, 1997. The State Government issued notification dated 21st January, 1998 declaring port limit. On 1st June, 1998, Gujarat Maritime Board wrote a letter to the petitioners to utilize the land in question only for the purpose of port related and port development activity. The petitioners, on 9th June, 1998 requested to change the use of the land from industrial use to port back up and related use and the request was granted. The petitioners vide application dated 7th October, 1998 requested on similar lines as above to the Deputy Secretary, Revenue Department for allowing the change of purpose of using the land. On 29th January, 1999, Gujarat Maritime Board wrote a letter mentioning the land earmarked for development of Mundra Port and thereafter, on 23rd April, 1999 the District Collector issued order of allotment of the land in question in favour of the petitioners. In both these petitions, the petitioners are challenging the order dated 03/2-3/99 passed by the Additional Chief Secretary, Revenue Department (Appeals) as being wholly arbitrary, illegal and violative of the principles of natural justice as also contrary to the record.

#. In both these petitions, the prayer is to set aside the order passed by the respondent No.2 dated 3.2/3.99 Annexure-A and to direct the respondent No.3 to hand over vacant and peaceful possession of the land in question allotted to the petitioners as per the order passed by him dated 23rd April, 1999.

#. The main grievance of the petitioners in these petitions are that the respondent No. 2 - The Additional Chief Secretary (Appeals), Revenue Department has passed the final order against the principles of natural justice. The petitioners are directly concerned in respect of the land in question which has been granted by the respondent No.2 in favour of the respondent No. 4 Akash Salt Industries and Dolly Salt Industries.

#. It is the case of the petitioners that said authority has not given any opportunity of hearing and order passed by him adversely affected to the rights of the petitioners. It is also pointed by the petitioners that the respondent No. 2 has committed error to the effect that there is no necessity to have no objection certificate from Gujarat Maritime Board which is contrary to law and according to the provisions of the Indian Ports Act, 1908. The State Government has powers to declare the port limit in respect of the minor ports and accordingly the port limit of Mundra port has been declared by the State Government from time to time and lastly such revised port limit declared by the State Government vide Port and Fisheries Department was issued vide Notification dated 21st January, 1998, wherein said port limit declared by the Government of Gujarat along with map clearly to go to show that land in question is situated within port limit declared by the Government of Gujarat. Therefore, according to the petitioners that once the land is situated in port limit declared by the Government, it is incumbent upon the Revenue Department to call for concurrence from the port department Gujarat Maritime Board before allotting the said land to any party other than the Gujarat Maritime Board. Similarly, circular issued by the State Government dated 24th January, 1968 which specifically requires that the land situated within the port limit cannot be disposed of or given to a third party on long term lease basis without obtaining concurrence from the Port Department i.e. from Gujarat Maritime Board. Even according to the provision of Gujarat Maritime Board, 1981 though the ownership of the land situated within the port limit does not stand transferred to the Port Authority, the management and control of the property vests with the Gujarat Maritime Board under Section 20 of the Gujarat Maritime Board Act, 1981. Therefore, it is the case of the petitioner that while allotting the land to the respondent No.4 by respondent No.2. No Objection Certificate from Gujarat Maritime Board was not necessary which finding is contrary to law and therefore, order passed by the respondent No.2 is required to be quashed and set aside. It is also submitted by the petitioners that the order of respondent No.2 amounts to clearly reflects non application of mind. It is also submitted that it was not considered by the respondent No.2 that the land in question which has been ordered to be allotted in favour of the respondent No. 4 is the very same land in question which was already allotted to the present petitioners and without ascertaining these facts, the respondent No. 2 proceeded to allot the land in favour

of the respondent No.4. It is also case of the petitioners that the development of the port is paramount consideration rather than development of salt works. The port can be developed on sea coast whereas the development of salt works can be done even at distance place. The land falling within the port limit cannot be allotted without first having proper No Objection Certificate from Gujarat Maritime Board. One example has been given by the petitioners in respect of Bharat Salt Works which held the land under long term lease basis for last more than 60 years. However, after the pronouncement of Port Policy and after the Gujarat Maritime Board earmarked the land admeasuring 5200 acres for the development of Mundra Port in joint venture with the petitioners, the said Bharat Salt Works had to vacate the land on expiry of lease period since the land on which the said Bharat Salt Works was situated and very land was overlapped with the land which was earmarked by the Gujarat Maritime Board for the development of port. Therefore, according to the petitioner if an opportunity was given to the petitioner by the respondent No.2 and then all these facts must have been pointed out to the respondent No.2. The petitioner has also pointed out one identical case decided by this Court on the basis of the consent between the parties in Special Civil Application No. 6558 of 1998 filed by one M/s Surya Salt Industries for allotment of the land for the purpose of Salt Works claiming the allotment of the land almost on similar ground of considering their application on priority as per the Government Resolution dated 31st December, 1981. In the said petition also, claim of said Surya Salt Industry has been objected by the Gujarat Maritime Board and therefore the said industry has considered another portion of the land which has not been objected by the Gujarat Maritime Board. The petitioner has also submitted that no objection certificate as required from Gujarat Maritime Board has not been given to respondent No. 4 and therefore unless such no objection certificate is granted by the Gujarat Maritime Board, the land in question cannot be allotted in favour of the respondent No.4. The petitioner has also pointed that one of the condition of the circular dated 31st December, 1981 issued by the Government as Item No. 2(5) sub clause (KH) wherein, it has been mentioned that if the land which has been demanded by the concerned party and if that land is situated within area of port then, it is necessary to have No Objection Certificate from the port authority and if it is covered under the forest area,then it is also necessary to have Non Objection Certificate from forest department. Therefore, even according to the condition of allotment as per the Government Circular

dated 31st December, 1981, such no objection certificate from the Gujarat Maritime Board is necessary being port authority and when the same has not been granted in favour of the respondent No.4 and therefore, the order passed by the respondent No.2 in question is contrary to even circular issued on 31st December, 1981 and contrary to the port policy and therefore, according to the petitioners orders passed by the respondent No.2 is contrary to the principle of natural justice because in the said proceedings, the petitioners were not heard and no opportunity was given. The land which has been allowed to the petitioners by the State Government by order dated 8th October, 1997 prior to the order passed by the respondent No. 2 which has been ignored by the respondent No.2 and therefore, according to the petitioners, said order is required to be set aside.

#. After considering the averments made by the petitioners in respect of the two groups claiming the same land in question, it is necessary to consider the affidavit in reply filed by the Mamlatdar and Collector, Kachchh in Special Civil Application No. 4455 of 1999. The Mamlatdar Shri D.L.Parmar has filed the affidavit and pointed out the correct facts. According to him that Dolly Salt Industries, Adipur, Kachchh vide their application dated 1st December, 1995 demanded 330 acres of land of village Dhrub, Taluka : Mundra outside Traverse S.No. 169. Since necessary details have not been submitted by the petitioner, the said application was rejected vide order dated 28th January, 1997. The petitioners had shown their willingness and readiness to submit all the necessary details in support of their demand by application dated 15th February, 1997. On receipt of the said application, instructions were issued to Mamlatdar and Deputy Collector, Mundra to submit necessary proposals vide letter dated 10th April, 1997. However vide letter dated 2nd June, 1998,the said application was rejected because keeping in view the need of the land in question in future for the purpose of allotting the same to Gujarat Maritime Board and also the need for reserving such land for the purpose of the development of New Mundra Port and also industries based on the said port. Being aggrieved by the said decision, the petitioner approached the Additional Chief Secretary (Appeals), Revenue Department under Section 211 of the Land Revenue Code. The revisional authority vide order dated 3/2-3/1999 allowed the said revision application and directed the Collector to decide the application of the petitioner within two months. However, vide application dated 30th December, 1996, Adani Port Ltd and

Adani Chemicals Ltd. made an application for allotment of 500 acres of land for industrial purposes. The proposal vide letter dated 31st May, 1997 was submitted to the Revenue Department. The Revenue Department vide its order dated 8th October, 1997 allotted 500 acres of land to Adani Port Ltd and Adani Chemicals Ltd. for industrial purposes and also for industries related purposes like storage, godown etc. The Adani Industries made necessary payment pursuant to the said order and accordingly formal order dated 23rd April, 1999 was passed in this regard in compliance with the aforesaid order passed by the Government. Allegation of malafide has been denied by the Mamlatdar. Therefore, according to the Mamlatdar that land allotted to Adani Group of Industries and also the demand made by Dolly Salt Industries are overlapping and hence no decision was taken by this office pursuant to the order passed by the revisional authority. The Mamlatdar has also further mentioned that vide letter dated 3rd April, 1998, the Gujarat Maritime Board has also informed the office that taking into consideration the future need of land for the purposes of development of the port and port related industries, no land should be allotted to any other purposes. Copy of the said letter dated 3rd April, 1998 has been annexed to the affidavit and therefore, according to the Mamlatdar in light of the letter dated 3rd April, 1998 of Gujarat Maritime Board, the order passed by the Collector dated 2nd June, 1998 rejecting the application of the petitioner was legal, valid and proper order. According to the Mamlatdar, in pursuance of the order passed by the revisional authority, no order has been passed from the office of the Collector and the present petition is premature.

##. In light of the averments made in affidavit filed by the Mamlatdar, now it is also to consider the affidavit filed by Mr.Kamal Dayani, Collector of Kachchh in pursuance to the direction issued by this Court. According to the Collector, the petitioner claiming priority over the land bearing Survey No. 169 of village Dhurb and has demanded by the petitioner vide their application dated 1st December, 1995 on the basis of the Government Resolution dated 31st December, 1981 and consequently has also interalia challenged the order passed by this respondent dated 23rd April, 1999 passed in favour of the respondent Nos. 6 and 7. It is also interalia prayed for by the petitioner to implement the order passed by the respondent No. 2 dated 3/2-3/ 1999. The Collector has specifically mentioned that on bare perusal of the order passed by the respondent No. 2 dated 3/2-3/1999. It appears that the petitioner has

suppressed certain material facts from respondent No.2 and while dealing with revision application of the petitioner, the respondent No.2 has proceeded on the basis that the land in question as claimed by the petitioner does not overlap with the land allotted to responent No. 6 and 7 herein. However, in fact, after examining the record, according to the Collector, the land claimed by the petitioner from Survey No. 169 of village Dhurb is overlapping with the land allotted to the respondent Nos. 6 and 7 vide order dated 8th October, 1997. Therefore, according to the Collector, under the circumstances, the entire basis of the petition is misconceived and misconstrued both in law and facts. The Collector further submitted certain facts in the affidavit on the basis of the record. It is stated that it appears that the petitioner has applied for the land in question somewhere on 1st December, 1995. Thereafter, it appears that said application of the petitioners came to be rejected by reply dated 28th January, 1997 for the reasons contained therein mainly on the ground that the land demanded by the petitioner was also demanded by the certain people belonging to backward class. Thereafter, on 15th February, 1997 the petitioners appears to have given revised application by which the petitioner requested the respondent even to consider the case of the petitioner after considering the case of this backward class people vide application dated 15th February, 1997. Thereafter, it appears that on record 13th May, 1997, a report has been forwarded by the Mamlatdar, Mundra to the Deputy Collector in respect of the revised application of the petitioner and in the said report it is stated that the constitution of the partnership deed of the petitioner is also changed and it was also submitted that if the application of the petitioner can be considered from the original date, then there should not be any difficulty if the land demanded by the petitioner is allotted to it.The said report submitted by the concerned Mamlatdar to the Deputy Collector vide his report dated 29th May, 1997 has further submitted a report to the present respondent interalia recommending the case of the petitioner and it was specifically mentioned in the said report that prior to considering the case of the petitioner, necessary opinion of the Gujarat Maritime Board may be sought for and the same is required. Simultaneously it appears that the respondent Nos. 6 and 7 were granted permission by the State of Gujarat to build a captive jetty as Mundra Port vide permission dated 10th January, 1994. It appears that after said captive jetty project of respondent Nos. 6 & 7 progressed for providing necessary back up area the said Respondent No. 6 and 7 appear to have demanded the land

which the petitioner has demanded from this respondent and also appear to have applied for necessary no objection certificate from the Gujarat Maritime Board and the said No Objection Certificate appears to have been granted by the Gujarat Maritime Board to respondent Nos.6 and 7 vide No Objection Certificate dated 11th September, 1996. After getting necessary No Objection Certificate for the Gujarat Maritime Board, it appears that the said respondent Nos. 6 and 7 have applied for the land in question vide their application dated 30th December, 1996. The Government of Gujarat Revenue Department, Gandhinagar vide order dated 8th October, 1997 the land in question on which the petitioner is making claim has been allotted to the respondent Nos. 6 and 7 for providing backup area to the captive jetty project sanctioned by the Government of Gujarat. The Gujarat Maritime Board appears to have advised the respondent No. 6 to use the land allotted to it for the port related purposes only. It is also stated that the amount in respect of the land allotted to respondent Nos. 6 and 7 has been deposited since the possession of the land allotted to the respondent Nos. 6 and 7 was not given. It appears that said respondent Nos. 6 and 7 have again approached the Government of Gujarat authorities for expeditiously giving possession of the land which was already allotted to the respondent Nos. 6 & 7 and on the basis of the said request, it appears that the Hon'ble Minister for Revenue has made a remark as the Administrative Head for expeditious disposal of the demand of respondent Nos. 6 and 7 and accordingly, this respondent issued order dated 23rd April, 1999 allotting the land in question in favour of the respondent nos. 6 and 7 with revised condition which is at Annexure-M to the petition. According to the Collector, the land in question does overlap with the land already allotted to the respondent Nos.6 & 7. There is no question of favoritism as alleged by the petitioner and allegations regarding malafide and favoritism are absolutely misconceived and misconstructed and therefore the same are denied by the Collector. According to the Collector, such allegations being without there being any basis, authority of jurisdiction vested with respondent No.1 are absolutely false and baseless. The Collector lastly pointed out in his affidavit that the land in question allotted in favour of the respondent Nos. 6 and 7 is more than 500 mtrs away from High Tide Line and therefore the question of applicability of CRZ does not arise.

##. The petitioner has filed rejoinder against the affidavit filed on behalf of the respondent Nos. 6 and 7, the Mamlatdar and the Collector.

##. I have heard the learned advocates Shri T. S. Nanavati, Mr.P. R. Nanavati and Mr.D.N. Patel, learned AGP at length in respect of the subject matter of all the petitions. In short the submissions of Mr.T.S.Nanavati, learned advocate is that the order passed by the revisional authority is legal and valid and the same is just and proper and therefore, the Collector has to carry out such order and to allot the land in question in favour of the petitioner. Mr.T.S.Nanavati has also pointed out that the application submitted by the petitioners Dolly Salts Industries and Akash Salt Industries is prior in point of time in comparison to the respondent No.6 and 7. He also submitted that the details of submission of application dated 1st December, 1995 by the petitioner Dolly Industries that the land in question has been surveyed by DLR on 11th March, 1996. The said application first time rejected on 28th January, 1997 and the review application is decided on 1st February, 1997 and second rejection order dated 2nd June, 1998 by the Collector. In comparison to that Mr.T.S.Nanavati has pointed out that the application of respondent Nos. 6 & 7 is dated 30th December, 1`996 and the allotment has been made by the Government in favour of the respondent Nos. 6 & 7 by order dated 8th October, 1997 and thereafter ultimately the order has been passed by the Collector in favour of the respondent Nos. 6 and 7 on 23rd April, 1999. Mr.T.S.Nanavati has further submitted that the Collector has passed order on 23rd April, 1999 recalling the order passed by the Additional Chief Secretary (Appeals), Revenue Department which is higher authority over the Collector. The revisional authority has passed order on 3/2-3/1999 and that order has been ignored by the Collector passing the order in respect of the very same land in question on 23rd April, 1999. Though Mr.T.S.Nanavati has made number of allegations of malafide, favoritism and interference by the Hon'ble Minister of Revenue Department against the respondent No. 6 and 7 and also against the respondent authorities namely Mamlatdar, Mundra as well as Collector of Kachchh. According to my opinion, the personal allegation against the State Authorities as well as aginst the Hon'ble Minister are not necessary to go into in detail while adjudicating the order passed by the Revenue authorities dated 3/2-3/1999 which is legal and valid or not required to be examined in the present proceedings. It is also necessary to examine legality and validity of the order passed by the Collector dated 3/2-3/1999. Therefore, in group of four petitions, two order dated 23rd February, 1999 passed by the Additional Chief Secretary (Appeals), Revenue Department and the

order passed by the Collector, Kachchh dated 23rd April, 1999 are required to be examined by this Court and therefore, there is need to go into detail of the submission which has been made by the respective learned advocates appearing on behalf of the respective the parties.

##. It is important to note that the order passed by the Collector on 2nd June, 1998 wherein the application has been submitted by the petitioners Dolly Salt Industries and Akash Salt Industries has been rejected by the Collector, Kachchh on the ground that keeping in view the need of the land in question in future for the purpose of allotting the same to Gujarat Maritime Board and there is need for reserving such land for the purpose of development of new Mundra Port and also industries based on said port and the said land has been selected by the Gujarat Maritime Board meaning thereby, earmarking the said land by the Gujarat Maritime Board for the purpose of development of the port and therefore no objection certificate has not been given by the Gujarat Maritime Board and on that ground said applications of both the industries namely Dolly Salt Industries and Akash Salt Industries were rejected by the Collector. At this stage, it is also necessary to consider one aspect that by letter dated 3rd April, 1998 as referred by the Mamlatdar in his affidavit that Gujarat Maritime Board has also informed the Office of the Mamlatdar or Collector that taking into consideration future need of land for the purposes of development of the port and port related industries, no land should be allotted to any other purpose. Keeping in mind the said letter dated 3rd April, 1998 issued by the Gujarat Maritime Board, the Collector Kachchh has rejected the application dated 2nd June, 1998 filed by the petitioners. The said order dated 2nd June, 1998 passed by the Collector has been challenged by both the industries in revision under Section 211 of the Bombay Land Revenue Code before the Additional Chief Secretary (Appeals), Revenue Department before the revisional authority. After perusing the entire order, according to my opinion, the State Authority namely the Collector or the Mamlatdar has not been properly represented the case before the revisional authority. Therefore, the revisional authority has relied upon the submission which has been made by the respective parties and passed order on the footing that though the land in question has been demanded by Gujarat Maritime Board but demand of land by Gujarat Maritime Board in order to cover which area and how much land for that purpose, has not been clarified and considering the map which has been prepared by the DILR, the demand of

Gujarat Maritime Board in respect of the land in question, it covers only in respect of the claim of the Swati Salt Industries and the same is not covered the land which has been demanded by Akash and Dolly Salt Industries. This finding of revisional authority is contrary to the order passed by the Collector. The revisional authority has not appreciated one aspect that the Collector in turn said that the land in question which has been demanded by Akash and Dolly Salt Industries has been selected by Gujarat Maritime Board and also not granted No Objection Certificate and the said land is required for future need for the port purposes and industries relating to the port and therefore, not to grant any land in question to any other purposes to any other party. Therefore, the revisional authority, according to my opinion, has not applied the mind properly and not considered the order of the Collector which has been passed on letter of Gujarat Maritime Board dated 3rd April, 1998. According to the Government policy, according to the Government Circular dated 31st December, 1981, as per Item No.2 (5)(kh) if any Government land is covered by port area, then No Objection Certificate from port authority is necessary before allotting the land for the purpose of Salt Industries. It is also necessary to note that this Circular issued by the Government of Gujarat dated 31st December, 1981 in respect of allotting the Government land only to salt industries and priority as well as other aspects are only applicable to the salt industries and not to other industries. Therefore, the claim of priority which has been advanced by the learned advocate Mr.T. S. Nanavati in comparison to the respondent Nos. 6 and 7 are not applicable because the claim of respondent Nos. 6 & 7 are not for the purpose of salt industries but it is in respect of the development of the port area and industries relating to the port. Therefore, priority does not assume importance and relevant factor for determination of claim of the respective parties because this circular dated 31st December, 1981 is only in respect of the allotment of the Government land for the purpose of production of salt and therefore, this circular is not applicable to the respondent Nos. 6 and 7 because their demand is not relating to the salt industries. However, the petitioners - two industries must have to satisfy the condition which has been incorporation in the said order dated 31st December, 1981. The first aspect is that if the land in question which has been demanded by the petitioner if covered by the port area then No Objection Certificate from Port Authority is mandatory condition precedent. In case of both the industries, Akash Salt

Industries and Dolly Salt Industries, No Objection Certificate have not been obtained by the said industries and no such No Objection Certificate has been given by the Gujarat Maritime Board in favour of these two salt industries. In comparison to that, Gujarat Maritime Board has issued no No Objection Certificate in favour of the respondent Nos. 6 & 7 by letter dated 11th September, 1996 of Gujarat Maritime Board as mentioned by the Collector in his affidavit in para-4 internal page-4, therefore, the respondent Nos. 6 & 7 had obtained No Objection Certificate dated 11th September, 1996 from Gujarat Maritime Board in their favour and on that basis, their applications were scrutinized by the respondent authorities and ultimately, by order dated 8th October, 1997, Government of Gujarat, Revenue Department, Gandhinagar has granted the land in question on which the petitioners - two salt industries are making claim has been allotted to respondent Nos. 6 and 7 for industrial purposes pursuant to the application of the respondent Nos. 6 & 7 for providing back up area to captive jetty project sanctioned by the Government of Gujarat. It is also necessary to note that the revisional authority has not taken care to call for the concerned officers in respect of the land in question whether it covers by the port area or whether that land in question has been declared within port area limit or not and whether No Objection Certificate has been given by Gujarat Maritime Board or not ? Without inquiring into detail, the revisional authority in arbitrary manner passed order in favour of the petitioners with direction to the Collector to decide the said application of the petitioner in light of the observations made by him in order dated 3/2-3/ 1999. It is also necessary to note that while scrutinising the applications submitted by these two salt industries after the report of the Mamlatdar and the Deputy Collector, Sub Division, Bhuj has also opined in his report that applications of these two salt industries can be considered subject to opinion from the Gujarat Maritime Board then only, the applications of these two salt industries can be sanctioned by the appropriate authority meaning thereby that the Deputy Collector as well as the Collector both have considered this facts in mind while deciding the application submitted by these two salt industries that whether Gujarat Maritime Board has agreed to allot the land in question to these salt industries or not. After considering this fact and considering the letter dated 3rd April, 1998 of the Gujarat Maritime Board, the Collector has rightly rejected the applications submitted by these two salt industries on 2nd June, 1998. However, the order passed by the Collector dated 23rd April, 1999 in favour of the

respondent Nos. 6 & 7 on the basis of the earlier order passed by the State Government dated 8th October, 1997 wherein, the land in question has been allotted to the respondent Nos. 6 & 7. The order dated 23rd April, 1999 is nothing but an order of possession of land in question in pursuance of the first order of allotment dated 8th October, 1997. The amount which has been fixed by the Government in order dated 8th October, 1997 that amount has also been deposited by the respondent Nos. 6 & 7 but possession of the land allotted by order dated 8th October, 1997 has not been given to the respondent Nos. 6 & 7. Therefore, it appears that the respondent No.6 & 7 have approached the Government authorities for expeditiously giving the land in question which was already allotted to them and therefore and if such request is made to the Government authority and the same has been considered by the Head of the Department - the Hon'ble Minister of the Revenue Department and even if he directed to the lower authority to give possession of the land in question which has already been allotted by order dated 8th October, 1997, according to my opinion,there is nothing wrong if the Head of the Department is taking care in response to the order passed by the State Government in favor of the respondent No. 6 & 7 dated 8th October, 1997 which has not been implemented after period of atleast more than one and half year. In such circumstances, the respective parties can be considered to be rightly entitled to approach the Head of the Department since he being the Minister of the concerned department. Therefore, allegations of these two salt industries against the said Minister as well as against the respondent No. 6 & 7 that they have hurriedly passed said order have no basis and there is nothing wrong if Head of the Department is directed to the concerned authority to pass appropriate orders. Therefore, according to my opinion, the order dated 23rd April, 1999 passed by Collector, Kachchh is legal and valid. There is no error or any infirmity in the order dated 23rd April, 1999. The order dated 8th October, 1997 which has been passed by the Deputy Secretary of Revenue Department of State Government is also quite just legal and valid order. The said order dated 8th October, 1997 passed by authorityafter following all necessary formality and obtaining no objection certificate from Gujarat Maritime Board. On the basis of the order dated 8th October, 1997 the Collector Kachchh has passed order dated 23rd April, 1999 wherein no illegality committed by any respondent authority. It is quite legal and valid order which does not require any intereference of this Court while exercising powers under Article 226 and 227 of the Constitution of India. It is also necessary to consider

one another aspect that the revisional authority at the time of passing the orders, the respondent Nos. 6 & 7 are not party before the revisional authority. However, the land in question are overlapping as per the two affidavits which have been filed by the authorities namely the Mamlatdar, Mundra and the Collector, Kachchh and considering the relevant affidavit of Mamlatdar wherein, in terms it is mentioned by the Mamlatdar, Mundra that the land allotted to the Adani Group of Industries and also demand made by the Dolly Salt Industries are overlapping and therefore, no decision was taken by this office pursuant to the order passed by the revisional authority. Similar fact has been narrated by the Collector, Kachchh in his affidavit that in fact after examining the record, it is asserted that the land claimed by the petitioners means two salt industries from Survey No. 169 of village Dhurb is overlapping with the land allotted to the respondent No. 6 & 7 vide order dated 8th October, 1997. Therefore, considering the affidavit filed by the Mamlatdar and the Collector, Kachchh who are the State Authorities and independent authorities have made averments on the basis of the record and therefore, according to my opinion, that order passed by the revisional authority - the respondent No.2 - Additional Chief Secretary (Appeals) of Revenue Department dated 3/2-3/ 1999 in revision application Nos. 24 / 987 and 25/98 are required to be quashed and set aside, which is just and proper to resolve the factual dispute in respect of the claim of the land in question by two groups namely Akash Salt Industries and Dolly Salt Industries and as against Adani Group of Industries, according to my opinion, if it is directed to the revisional authority to decide and examine said issue after hearing all the respective parties namely Dolly Salt Industries, Akash Salt Industries and Adani Chemicals Ltd and Adani Port Ltd so also Gujarat Maritime Board and the concerned authorities including Collector, Kachchh,Mamlatdar, Mundra and other authorities concerned and having interest in the said subject matter, would certainly meet the ends of justice, otherwise, it is apprehended that this litigation will go on for number of years.

##. Therefore, while quashing and setting aside the order passed by the revisional authority - The Additional Chief Secretary (Appeals), Revenue Department in respect of the Revision Application No. 24/98 and 25/98 dated 3/2-3/1999 remanding the matter back to the very same authority to decide afresh both these revision applications filed by the Dolly Salt Industries and Akash Salt Industries namely Revision Application No. 24/98

and Revision Application No. 25/ 98 after considering the all the relevant record in respect of the land in question and after giving reasonable opportunity to Adani Chemicals Ltd and Adani Port Limited and also considering the order passed by the Collector, Kachchh dated 23rd April, 1999 - Annexure-M and after also giving an opportunity of to Gujarat Maritime Board and also respective State authorities viz. Mamlatdar, Mundra as well as the Collector, Kachchh. It is also directed to the revisional authority to decide the said controversy between the parties in respect of the land in question and since the matter involves important question and being old one, in the interest of justice, the revisional authority - the respondent No.2 shall decide the aforesaid revision applications No. 24 / 98 and 25/98 after restoring the same on record within a period of six months from the date of receiving the writ of this Court.

##. This Court, in the interest of justice, also considers it expedient to direct the State authorities namely The Mamlatdar, Mundra and Collector, Kachchh to submit all the necessary records, details and shall remain personally present to represent the case of the State Government by producing necessary record before the revisional authority so that the revisional authority can arrive at appropriate decision in respect of the land in question and to resolve the real controversy between the respective parties properly. It is also directed to the revisional authority to decide both these revisions application in accordance with law after giving reasonable opportunity of being heard to all the respective parties which has been referred to above though they were not the party in the revision proceedings.

##. While remanding these matters back, it is however, made it clear to the revisional authority namely Additional Chief Secretary (Appeals), Revenue Department, whatever observations made by this Court in this judgment, may not come in the way of the revisional authority to decide the controversy afresh between the parties and the revisional authority without being influenced of the aforesaid observations of this Court shall decide these two revisions namely Revision Application No. 24 / 98 and 25/ 98 afresh independently in accordance with law.

##. I have passed this order considering all these four petitions involving very subject matter in challenge and therefore, I mostly and mainly refer and rely the proceeding relying on the basis of Special Civil

Application No. 4455/99, therefore, averments and necessary documents, affidavit who are on record of Special Civil Application No. 4455/99 has been referred by me just for for sake of convenience of this Court. In the result, Special Civil Application Nos. 855/2000 and 870/2000 are allowed and Rule is made absolute in the said two petitions to the extent aforesaid. Special Civil Application Nos. 4455/99 and 4556 / 1999 are dismissed and rule is discharged accordingly in aforesaid two petitions.

##. In view of this order passed in these four petitions, Civil Application Nos. 7372 and 7373 of 2000 do not survive and the same stand disposed of accordingly.

##. The office is directed to send writ of this order to Additional Chief Secretary (Appeals), Revenue Department immediately.

Date : 4/10/2000 [H.K.Rathod,J.]

FURTHER ORDER

After the judgment has been pronounced, learned Advocate Mr.T.S. Nanavaty has prayed for continuing the ad-interim relief granted earlier for some time so as to enable him to approach the higher forum . Said prayer has been opposed by Mr.P.R.Nanavaty, learned advocate appearing for the other side. However, considering the facts and circumstances of the case, in the interest of justice, ad-interim relief granted earlier is ordered to continue upto 13th November, 2000.

Date : 4/10/2000 [H.K.Rathod,J.]

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